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从新马填海案看 ITLOS 临时措施

Provisional Measures of ITLOS from the Perspective
of “The Land Reclamation Case”

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内容摘要

“新马填海案”是国际海洋法法庭（ITLOS）受理的第4个关于临时措施的案件，也是国际上第一个相邻两国间因为填海问题提交第三方争端解决机制的案件，虽然距离国际海洋法法庭规定临时措施之时已经过去了5年多，但是据笔者掌握的资料，国内对该案件展开系统研究的论著依然少之甚少，这是本文创新之处，也是本文劣势所在。本文希望通过对该案件的分析，一方面，展开对国际海洋法法庭临时措施的更为深入的研究；另一方面，鉴于我国也在大兴填海工程，并且全国上下掀起了一轮新的填海浪潮的情况下，笔者也希望从该案件中得到一些启示，以求防患于未然。

本文前言部分首先对世界范围内各国的填海活动及填海活动对生态环境的负面影响进行了简单的叙述，指出各国大兴填海与填海的负面影响的相结合，极易导致国家之间就此问题的纷争，新马填海案就是一个典型的例子。

本文除去前言和结论分为三章。

第一章 分析了国际海洋法法庭的建立、国际海洋法法庭强制管辖权以及国际海洋法法庭临时措施的一般问题，并通过与国际法院临时措施的比较，加深对国际海洋法法庭临时措施的认识。

第二章 全面展开对“新马填海案”的分析。首先，对该案件前后经过即从争端发生、规定临时措施到本案最终解决进行了回顾。其次，对于本案所涉及的相关问题，如管辖权、意见的交换、情势紧迫性等问题做了分析。最后，对于该案涉及也是所有临时措施案件都可能涉及的预防原则和合作原则做了引申研究。

第三章 从我国填海造地的实际出发，就从“新马填海案”获得应对类“新马填海案”的启示阐述了自己粗浅的意见。

关键词：ITLOS；临时措施；填海造地

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Abstract

The land reclamation case concerning Singapore and Malaysia is the fourth case accepted by the international tribunal for the law of the sea (ITLOS), regarding provisional measures, which is also the first case in the international law which submitted to a third party settlement mechanism by two adjacent countries concerning land reclamation activities. Though it has been for over 5 years from prescribing provisional measures by the international tribunal for the law of the sea, papers concerning systemic research on this case remains very limited in our domestic academic community, according to the author's available material. In a sense, it's an innovation of this paper, but it is only one aspect of the matter, for on the other aspect, it is also a disadvantage for this article because of lack of related material. Through analysis of the case thoroughly, on the one hand, the author try to conduct a more in-depth study on the provisional measures before the international tribunal for the law of the sea and, on the other hand, in view of our reclamation projects are proceeding in a large scale around the whole country, and further more, the whole country seems to set off a new wave of land reclamation activities, the author hopes that we could learn lessons from the land reclamation case in order to nip trouble in the bud when facing the same dispute..

The preface firstly, simply narrate land reclamation activities around the world as well as it's negative impact on the ecological environment, secondly the author points that the combination of Worldwide land reclamation activities and the negative impact of land reclamation could easily leads to a dispute between countries adjacent on this issue, just like the famous case, case concerning land reclamation between Singapore and Malaysia.

This paper consists of three chapters in addition to Preface and Conclusions.

Chapter one analysis the founding and compulsory jurisdiction of the international tribunal for the law of the sea and the general issue of it's provisional measures, and through a comparison between provisional measures before international court of justice (ICJ) and the international tribunal for the law of the sea , the author intend to get a better understanding of the provisional measures before the international tribunal for the law of the sea.

Chapter two discusses fully on the “case concerning land reclamation by Singapore and Malaysia”. Firstly, the author reviews the whole details of the dispute from the happening of the dispute, the prescribing of provisional measures prescribed by the international tribunal for the law of the sea and the amicably settled of the dispute. Secondly, the author analyses the involved issues on this case, such as jurisdiction, exchange of views, urgency of the situation, and so on. Finally, there is an extended research on the precautionary principle and the principle of cooperation which maybe involved in all the cases regarding provisional measures before the international tribunal for the law of the sea.

Chapter three elaborates the author’s shallow views on the revelation of the land reclamation case between Singapore and Malaysia, concerning the disposal of dispute when facing such similar situation, on the reality of our country’s land reclamation activities.

Key Words: International tribunal for the law of the sea; International court of justice; Provisional measures.

缩略语表 Abbreviations

UNCLOS	United Convention for the Law of the Sea 联合国海洋法公约
ITLOS	International Tribunal for the Law of the Sea 国际海洋法法庭
ICJ	International court of justice 国际法院
GOE	Group of Expert 专家小组

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案例表 Table of Cases

Short Title	Full Case Title and Citation
Tuna Cases	Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), provisional measures, ITLOS Reports, 1999.
MOX Case	The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures, ITLOS Reports,2001.
Land reclamation Case	Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, ITLOS Reports,2003.

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